

<p style="text-align: center;">Chapter IV DETERMINATION OF ELIGIBILITY 707 KAR 1:310</p>

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SECTION 1. DETERMINATION OF ELIGIBILITY

ARC Decision

Upon completion of the tests and other evaluation materials, the ARC shall determine whether the child is a child with a disability who meets one or more of the eligibility categories as defined in 707 KAR 1:280 to the extent that specially designed instruction is required in order for the child to benefit from education.
A LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

The ARC is responsible for reviewing all evaluation data, considering the validity of all data, and making the eligibility decisions. These eligibility decisions are:

Step 1: Does the child have a disability that meets the criteria as defined in a disability definition; and

Step 2: Do the effects of the disability cause such impact (adverse effect) that the child must receive specially designed instruction in order to benefit from his/her education; and

Step 3: Is the influence of each determinant factor, if present, found to be of minimal influence, so that the child meets eligibility requirements when all other criteria are applied?

Within two school days of the receipt of the evaluation report, the KLEA Representative selects members of the ARC in accordance with Chapter V, IEP, Section 3. An ARC meeting is scheduled to:

- a. Discuss the evaluation information;
- b. Determine the presence of a disability;
- c. Assess the impact of the disability upon educational performance;
- d. Validate the effect of any specified determinant factors; and
- e. Develop or schedule development of the IEP, if appropriate.

If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for the child.

The IEP may be developed at this meeting, in accordance with procedures and timelines in Chapter V, IEP and Chapter VII, Procedural Safeguards, Section 1.

The KLEA Representative or other KLEA member of the ARC describes the decision-making process for eligibility determination, and possible IEP development, to include the following steps:

- a. Review and analyze all evaluation procedures, tests, records, and reports from the full and individual evaluation;
- b. Compare results of evaluation data with the eligibility criteria of the suspected disability to determine the presence of a disability (Step 1);
- c. If a disability is confirmed, determine the adverse effect of the disability upon educational performance (Step 2);

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- d. Specify the influence of relevant determinant factors (Step 3);
- e. Complete eligibility report(s) to document ARC decisions; and
- f. If eligibility is confirmed, discuss the development of the IEP.

In making eligibility determinations, a LEA shall draw upon information from a variety of sources, which may include:

- (a) aptitude and achievement tests;
- (b) parental input;
- (c) teacher recommendations;
- (d) physical condition;
- (e) social or cultural background; and
- (f) adaptive behavior.

A LEA shall ensure that information obtained from all of these sources is documented and carefully considered.

The specific data that must be available to make a disability determination may vary based on the requirements as stated in each disability definition and the evaluation information requested by the ARC.

After a full and individual evaluation is completed according to procedures in Chapter III, Child Find, Evaluation and Reevaluation, the ARC compares and analyzes all evaluation information and documents interpretation of the results on and Eligibility Determination Form provided by the KLEA.

The ARC does not determine that a child is eligible until a full and individual evaluation is completed according to procedures in Chapter III.

The documentation of a determination of eligibility includes an interpretation of the assessment data, the ARC decisions about the child's status as a child with a disability, and a statement of proposed or refused action. The learning disability written report or appropriate eligibility determination form developed by the ARC, in conjunction with the meeting summary, may constitute the required documentation. A copy is given to the parent.

If the ARC determines a child does not have a disability, or cannot determine adverse effect, or if the ARC cannot conclude that the influence of specified determinant factors is minimal, if present, then the ARC prepares a written explanation of why the child or youth is not eligible to receive specially designed instruction and related services, including a description of the information and evaluation data used as the basis for the decision.

The recorder documents on the meeting summary the ARC's reasons for determining the child is not eligible to receive specially designed instruction and related services, including an explanation of why eligibility is refused, a description of any options considered and the reasons why those options were rejected, a description of each evaluation procedure, test, record, or report the ARC uses for refusing eligibility; and a description of any other factors that are relevant to the ARC's decision.

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The LEA Representative gives the parent written notice of the refused action and a copy of the meeting summary.

Copies of the meeting summary and notices of the refused action are filed in the **educational record of the child or youth**.

Sufficient Evaluation

The evaluation shall be sufficiently comprehensive to identify all the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (707 KAR 1:300)

Evaluation information is determined sufficient if:

- a. Multiple non-discriminatory methods or measures were used to evaluate the areas of concern previously specified by the ARC;
- b. Data on family, environmental, and cultural factors is available for analysis to assist in the determination of the impact on educational performance;
- c. Referral data and additional information document the present levels of educational performance of the child, including how the disability affects the child's involvement and progress in the general curriculum;
- d. Information given provides objective and reliable indicators of child's performance;
- e. The documentation of the evaluation information is complete and reflects the information collected by the multidisciplinary team in all areas related to the suspected disability.

If the ARC determines that the evaluation information available is not sufficient to verify whether the child is disabled and needs specially designed instruction and related services, the ARC obtains additional evaluation information. The ARC members agree on what additional evaluation information is needed. The KLEA Representative assigns qualified evaluators to collect the additional information. The recorder writes on the Conference Summary the additional information needed and the roles of those people assigned to collect it. The ARC members agree upon a convenient date, location and time to continue the meeting to complete the eligibility determination. The recorder writes on the Conference Summary the date for the next meeting. The reconvened meeting is scheduled and held according to procedures and timelines in Chapter VII, Procedural Safeguards.

Evaluation Report

A copy of the evaluation report is provided to the parent, if requested, prior to the ARC meeting to determine eligibility. This report summarizes the referral questions and the tests and other assessment procedures completed to answer these questions. Implications of the assessment data for the child's success in the general curriculum and with respect to any disability are included together with any other evaluation information needed by the ARC for the determination of eligibility. (See also Chapter III, Child Find, Evaluation

and Reevaluation, Section 3)

An evaluation shall not be required before the termination of a child's eligibility due to graduation with a regular high school diploma or exceeding the age eligibility for FAPE.

A reevaluation would be required, however, if it is anticipated that a child will exit with a certificate of completion (not a regular high school diploma) prior to reaching the appropriate time for "aging out" of public education.

Professional Judgment Standard

Eligibility determination is a complex and difficult task for the ARC, even when all needed data are available, reliable and reasonably consistent. When any of the following conditions exist, the ARC may utilize a standard of professional judgment to resolve the issue of eligibility.

- a. invalid tests;
- b. tenuous rapport between child and examiner;
- c. poor testing conditions;
- d. inconclusive normative scores; or
- e. otherwise conflicting and inconsistent data.

The criterion for effective professional judgment is replicability. That is, given the available data and a clear outline of the ARC's decision-making process, could another ARC, which would include comparably qualified professionals, reasonably arrive at the same conclusions?

In such circumstances, requirements for the use of professional judgment include:

- a. Sufficient data in all eligibility areas; and
- b. A clear delineation of the available data and the ARC interpretation of each piece of data, and the basis for the interpretation.

Conditions/steps to ensure the replicability of professional judgment may include:

- a. A clear history of general education interventions that were focused on need, instructionally appropriate, of sufficient duration to reasonably expect success, and implemented in age and instructional level appropriate settings; and
- b. A comprehensive assessment which includes teacher-made and curriculum-based measures anchored with peer comparisons.

Steps for Determination of Eligibility

Step 1: Presence of a Disability

A determination of the presence of a disability is made by the ARC through a careful analysis of evaluation data and comparison with the eligibility criteria of the suspected disability. The definition of each disability is given below. If the ARC determines the presence of a disability, the next step in the eligibility process (see Step 2) is to determine

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the adverse effect of the disability on the educational performance of the child.

“Autism” means a developmental disability significantly effecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely effects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child’s educational performance is adversely effected primarily because the child has an emotional-behavior disability.

Necessary data includes measures of verbal and nonverbal communication and social interactions. Such measures may include: rating scales, behavioral checklists and observation(s) of the child's behavior. The ARC may also determine that an educationally relevant medical evaluation completed by a licensed physician is needed.

The ARC must consider the presence of an emotional-behavioral disability as a determinant factor in the child's lack of progress in the general curriculum. The influence of other determinant factors must also be evaluated by the ARC. (See Section 1, Step 3: Determinant Factors).

“Deaf-Blindness” means concomitant hearing and visual impairments that have an adverse effect on the child’s education performance, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness, unless supplementary assistance is provided to address educational needs resulting from the two disabilities.

Data must verify eligibility as both Hearing Impaired and Visually Impaired as defined later in this section. Additional data is required regarding the effects of the combination of these disabilities, and may include observation(s), teacher recommendations, assessment of adaptive behavior, and/or medical evaluation.

“Developmental delay (DD)” means that a child within the ages of three (3) through eight (8) has not acquired skills, or achieved commensurate with recognized performance expectations for his age in one or more of the following developmental areas: cognition, communication, motor development, social-emotional development, or self-help/adaptive behavior. Developmental delay includes a child who demonstrates a measurable, verifiable discrepancy between expected performance for the child’s chronological age and current level of performance. The discrepancy shall be documented by:

- (a) scores of two (2) standard deviations or more below the mean in one of the areas listed above as obtained using norm-referenced instruments and procedures; or
- (b) scores of one and one-half standard deviations below the mean in two (2) or more of the areas listed above using norm-referenced instruments and procedures; or
- (c) the professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment shall be used only where normed scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

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Kentucky has adopted the term "developmental delay", and defined the age range for that disability. In accordance with § 300.313(a), while the state cannot require an LEA to adopt and use that term, the KLEA will use and apply this term as defined by Kentucky regulations.

Data may include aptitude and achievement tests or developmental measures, communication, motor and social measures, observation(s), and measures of adaptive behavior. The use of a professional judgment standard is limited to situations in which normative scores are inconclusive. The conference summary report states the reasons for this determination of developmental delay. (See Section 1, "Professional Judgment Standard" of this Chapter)

"Emotional-behavioral disability (EBD)" means that a child, when provided with interventions to meet instructional and social-emotional needs, continues to exhibit one or more of the following, when compared to the child's peer and cultural reference groups, across settings, over a long period of time and to a marked degree:

- (a) severe deficits in social competence or appropriate behavior which cause an inability to build or maintain satisfactory interpersonal relationships with adults or peers;
- (b) severe deficits in academic performance which are not commensurate with the student's ability level and are not solely a result of intellectual, sensory, or other health factors but are related to the child's social-emotional problem;
- (c) a general pervasive mood of unhappiness or depression; or
- (d) a tendency to develop physical symptoms or fears associated with personal or school problems.

This term does not apply to children who display isolated (not necessarily one) inappropriate behaviors that are the result of willful, intentional, or wanton actions unless it is determined through the evaluations process that the child does have an emotional-behavioral disability.

A comprehensive evaluation must be conducted, and it must be determined that the child does have an emotional-behavioral disability, in order to then consider the determinant factor that is specific only to this disability. The influence of other determinant factors must also be evaluated by the ARC. (See Section 1, Step 3 of this Chapter).

Evaluation information is needed to confirm whether isolated (not necessarily one) inappropriate behaviors that are the result of willful, intentional or wanton actions were or were not the determinant factor in the eligibility decision. If such behaviors are so documented, and were in fact the determinant factor in the eligibility decision, then the child cannot be determined to be a child with an emotional-behavioral disability. However, these behaviors, if present, may be determined by the ARC to be of lesser influence; if the child meets all other eligibility criteria, the child is then determined by the ARC to be a child with an emotional-behavioral disability.

Required data must validate performance levels in social competence, academic performance, and intellectual ability. Additional data may be in the form of observation(s), teacher recommendations, health and social-developmental information.

According to procedures, the ARC determines that a child has an emotional-behavioral disability if a compilation of previous and current behavioral, academic, and intervention

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data verifies that:

- A. When compared to peer and cultural norms, the child continues to exhibit severe deficits in social competence or academic performance:
 - 1. after appropriate academic and behavioral interventions have proven ineffective
 - 2. across settings, which means the evaluation data demonstrates how the behavior of the child within the total school environment (across classrooms, instructional groups, non-academic and extra-curricular groups, and community-based activities) affects his or her educational performance; and
 - 3. over a long period of time, which means the emotional-behavioral area of concern has been evident for a minimum of two to six months; (this time frame is intended to rule out short-term situational crises and single incidents, with the exception of behaviors that are dangerous to self or others), and
 - 4. to a marked degree, which means that the emotional-behavioral area of concern is severe in terms of:
 - a. "frequency"- the number of times the behavior occurs over a given period of time;
 - b. "duration"- the average length of time that the child or youth engages in the behavior; and
 - c. "intensity"- the relative force, loudness, or intrusiveness of the behavior; and
- B. If any deficit in social competence is identified, then the deficit must impair personal relationships with peers or adults and the behavior must deviate from the standards for the appropriate peer and cultural reference groups.
- C. If any deficit in academic performance is identified, then the deficit must impair development, mastery, and application of skills and knowledge; the deficit in academic performance must also be related to social-emotional problems of the child, and is not solely a result of intellectual, sensory, or other health factors;
- D. A general pervasive mood of unhappiness or depression exists; or
- E. A tendency to develop physical symptoms or fears associated with personal or school problems is present.

“Hearing impairment (HI)” means that a child has a hearing loss that has an adverse effect on the child’s educational performance, whether permanent or fluctuating, ranging from mild to profound (a loss of 25 decibels (dB) or greater exists through speech frequencies of 500, 1000, and 2000 Hertz (Hz) in the better ear), and of a degree that the child is impaired in the processing of linguistic information through hearing, with or without amplification.

The ARC may request a comprehensive evaluation of hearing loss. Other data may include aptitude and achievement measures and classroom observations.

The ARC determines that the child has a hearing impairment as defined if evaluation information verifies that:

- a. A hearing loss of 25 dB or greater exists through the speech frequencies of 500, 1000, and 2000 Hz in the better ear, as reported by a qualified examiner;
- b. Deficits exist in processing linguistic information through hearing; and

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- c. Interpretation of the data, from the full and individual evaluation results documents that the hearing impairment adversely affects the educational performance of the child to the extent that the child is impaired in the processing of linguistic information through hearing, with or without amplification.

If the child does not meet the criteria in "a", but the hearing impairment adversely effects one or more of the competencies critical to independent functioning and social functioning, and the evaluation data verifies that the child requires specialized instruction in acquiring those competencies or in communication, then the ARC may apply a professional judgment standard in making its decision regarding eligibility. (See Section 1, "Professional Judgment Standard.")

"Mental disability" means that a child has one of the following:

(a) a mild mental disability (**MMD**) in which:

1. cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;
2. adaptive behavior deficit is at least two (2) standard deviations below the mean;
3. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
4. is typically manifested during the developmental period; or

(b) a functional mental disability (**FMD**) in which:

1. cognitive functioning is at least three (3) or more standard deviations below the mean;
2. adaptive behavior deficits are at least three (3) or more standard deviations below the mean;
3. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
4. is typically manifested during the developmental period.

In making a determination under the category of mental disability, the ARC may apply a standard error of measure, if appropriate.

Measures of cognitive functioning, academic performance, developmental history and adaptive behavior are required and may include teacher-made tests and curriculum-based assessment. Parental input, teacher recommendations, and observation(s) may also give helpful information.

Utilization of the applicable standard error of measurement enables the ARC to take into account test score error; this is especially important when the intelligence score is near a critical cutoff point. Care must be exercised to:

- a. Distinguish the standard error of measurement for the appropriate age group listed in the test manual from the listed tabled values for confidence intervals, and
- b. Ensure the adjusted score is used in combination with other evaluation data in the best interests of the child and not in isolation. The composite of evaluation data must support the eligibility decision.

Qualified examiners with statistical expertise are responsible for assisting the ARC in making the individualized judgments required to achieve sound eligibility decisions.

"Multiple disabilities (MD)" means concomitant impairments that have an adverse effect on the

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child's educational performance (e.g., mental disability-blindness, mental disability-orthopedic impairment, etc.), the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not mean deaf-blindness.

"A pupil is not considered to have a multiple disability if the adverse effect on educational performance is solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition." {KRS 157.200 (1)(h)}

Eligibility criteria must be substantiated by evaluation data for each separate disability; in addition, data is required regarding the effects of the combination of these disabilities including the child's inability to profit from a program designed for only one of the disabilities. This data may include observations, teacher recommendations, and adaptive behavior information.

The determinant factors specific to this disability must be addressed by the ARC. A child may not be determined to have multiple disabilities if the disability is deaf-blindness or a speech or language disability and any other disability. The influence of other determinant factors must also be evaluated by the ARC. (See Section 1, Step 3 of this Chapter).

"Orthopedic impairment (OI)" means a severe orthopedic impairment that adversely effects a child's educational performance. The term includes an impairment caused by a congenital anomaly (e.g., clubfoot, absence of some member, etc.), an impairment caused by disease (e.g., poliomyelitis, bone tuberculosis, etc), and an impairment from other causes (e.g., cerebral palsy, amputations, and fractures or burns that causes contractures).

The ARC may determine that an educationally relevant medical evaluation completed by a licensed physician is needed to verify:

- a. The existence of a severe orthopedic or physical impairment caused by congenital anomaly, disease, injury, or accident;
- b. The diagnosis and nature of the impairment; and
- c. Any limitations resulting from the impairment.

In addition, current educationally relevant evaluation information is needed to verify the impact of the impairment on educational performance in areas such as fine and gross motor abilities, locomotion, physical education, social competence and academics. Such measures may include teacher recommendations and observation(s).

"Other health impairment (OHI)" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

- (a) is due to a chronic or acute health problem e.g., as acquired immune deficiency syndrome, asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, or tuberculosis; and
- (b) adversely effects a child's educational performance.

The ARC may determine that an educationally relevant medical evaluation completed by

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a licensed physician is needed to verify:

- a. The existence of a severe health impairment caused by chronic or acute health problems;
- b. The diagnosis and nature of the health impairment; and
- c. The affect of the impairment on the vitality, strength, or alertness, including a heightened alertness to environmental stimuli, of the child.

In addition, current educationally relevant evaluation information is needed to verify the impact of the impairment on educational performance in areas such as fine and gross motor abilities, locomotion, physical education, social competence and academics. Such measures may include teacher recommendations and observation(s).

“Specific learning disability (LD)” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in diminished ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions like perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

The determination of whether a child suspected of having a specific learning disability is a child with a disability and whether the specific learning disability adversely affects educational performance shall be made by the child’s ARC and at least one person qualified to conduct individual diagnostic examinations of children, which may include a school psychologist, speech-language pathologist, or remedial reading teacher.

When a determination is to be made regarding eligibility in the area of specific learning disability, the KLEA Representative will add at least one qualified individual diagnostic professional to the ARC. This person(s) must have the technical expertise to assist in:

- a. Making critical eligibility decisions based on individual test data,
- b. The implications of test performance for success and progress in the general curriculum as compared to peers,
- c. Curriculum based assessment/measurement issues,
- d. The knowledge to make the psychometric judgments necessary for test selection and the generalization of individually valid data, and
- e. The ability to explain all of the above in terms that are understood by ARC members.

The persons listed are not interchangeable, but should be utilized in their respective areas of expertise, i.e., a remedial reading teacher and a speech language pathologist may be selected to assist in test selection, administration and interpretation in the areas of reading and communication skills, respectively. The school psychologist, however, may assist with the implementation of a variety of psychometric procedures and issues of differential diagnosis (e.g., rule out mental disability or emotional-behavioral disability).

The ARC may determine a child has a specific learning disability if:

- (a) the child does not achieve commensurate with his age and ability levels in one or more of the areas listed in this subsection, if provided with learning experiences appropriate for the child's age and ability levels; and
- (b) the child has a severe discrepancy as identified by a validated regression method between achievement and intellectual ability in one of the following areas:
1. oral expression;
 2. listening comprehension;
 3. written expression;
 4. basic reading skills;
 5. reading comprehension;
 6. mathematics calculation; or
 7. mathematics reasoning.

The ARC determines that a child has a specific learning disability if evaluation information verifies:

- a. when provided with appropriate learning experiences for age and ability levels the child does not achieve commensurate with his or her age and ability levels in one or more of the seven listed areas, and
- b. the area(s) of concern identified on the referral or through the comprehensive evaluation process has continued following appropriate support and general education interventions, and
- c. a severe discrepancy exists between academic performance and intellectual ability as determined by using a validated regression method, i.e., the regression estimated true score method.

The regression estimated true score method with a z-score set at four (4) percent is used when normative ability and achievement measures yielding valid scores are used, and correlation between the aptitude and achievement tests are known for the age of the child. Correlation tables are utilized as provided by KDE.

When (and only when) standardized, normative measures of ability and achievement appropriate to a validated regression method are invalid or not available, the ARC will reach a decision through a process of professional judgment. If this process is used, the evaluator will:

- a. provide a written rationale why the formal evaluation procedures used with most children are invalid or not available, including which scores from the aptitude and achievement measures are invalid or not available;
- b. specify the formal and informal assessment used to evidence the ability and achievement scores;
- c. provide scores and their interpretation from the alternative procedures;
- d. describe the ability and achievement indices for the child and the methods used to evaluate a specific discrepancy;
- e. describe how other children of the same age and ability are expected to perform; and
- f. describe whether the discrepancy between aptitude and achievement is severe.

Following a reevaluation, if the discrepancy between academic performance and cognitive aptitude is no longer severe, the ARC, including qualified professionals, should

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then discuss the ability of the child to transition into the setting where the child would be if not disabled. The ARC, considering all evaluation data and utilizing a professional judgment standard, must determine whether or not the child continues to be a child with a disability. (See Chapter III, Child Find, Evaluation and Reevaluation, Section 3)

The ARC shall not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

- (a) a visual, hearing, or motor impairment;
- (b) mental disability;
- (c) emotional-behavioral disability; or
- (d) environmental, cultural, or economic disadvantage.

The ARC verifies the specific learning disability is not primarily the result of a visual, hearing, or motor impairment; mental disability; emotional-behavioral disability; or environmental, cultural or economic disadvantage. (See Section 1, Step 3 of this Chapter) If evaluation data collected supports the presence of one or more of these determinant factors, the recorder writes in the Conference Summary:

- a. The severity and frequency of the determinant factor; and
- b. The method used for determining if this factor(s) is or is not the primary reason for the aptitude-achievement discrepancy.

In addition, the ARC, after determining the presence of a disability, must then evaluate the influence of other determinant factors. (See Section 1, Step 3 of this Chapter)

At least one team member other than the child's regular education teacher shall observe the child's academic performance in the regular classroom setting. If the child is less than school age or is out of school, the observation shall take place in an environment appropriate for the child.

Documentation of behavior observation(s) includes a description of the activity and behaviors observed, such as:

- a. The specific behavior(s) observed;
- b. The setting(s) in which observation(s) occurred;
- c. Observation(s) during engagement in the targeted behavior(s) in more than one situation or task and in antecedent and subsequent events;
- d. Times and lengths of observations, dates, and observers;
- e. Data collected over time demonstrating the frequency, duration, latency, or intensity of targeted behavior(s); and
- f. Criteria against which the targeted behavior(s) is judged (e.g., behavior(s) of comparison group, expected appropriate behavior).

The child is observed in the environment(s) in which the targeted behavior occurs. When a child is less than school age or out of school, observation(s) are conducted in age appropriate environments (e.g., preschool programs, vocational programs, day care, community, home).

Observation(s) are conducted by someone, other than the regular classroom teacher of the

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child, who is specifically trained in observation techniques and methods (e.g., teacher, psychologist, guidance counselor). (Note: This does not preclude a regular teacher from providing additional behavior observations.)

The regular classroom teacher of the child does not conduct a behavior observation within his or her own classroom for the purpose of meeting the evaluation requirements for specific learning disabilities.

An ARC shall develop a learning disability (LD) written report. This report shall contain a statement of:

- (a) whether the child has a specific learning disability;
- (b) the basis for making that determination;
- (c) the relevant behavior noted during the observation;
- (d) the relationship of that behavior to the child's academic functioning;
- (e) the educationally relevant medical findings, if any;
- (f) whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
- (g) the determination of the ARC concerning the effects of environmental, cultural, or economic disadvantage.

Each ARC member shall certify in writing whether the report reflects his conclusion. If it does not reflect his conclusion, the team member shall submit a separate statement presenting his conclusions.

The required information is contained within the Evaluation Report and the Specific Learning Disability Eligibility Report.

"Speech or language impairment" means a communication disorder, including stuttering, impaired articulation, a language impairment, a voice impairment, delayed acquisition of language, or an absence of language, that adversely affects a child's educational performance.

The ARC will be guided in its decision regarding the presence of a communication disorder by the use of the "Kentucky Eligibility Guidelines for Students with Speech-Language Impairment-Revised" (KEG-R).

The influence of determinant factors, specifically the influence of Limited English Proficiency (LEP), must be evaluated by the ARC. (See Section 1, Step 3 of this Chapter)

Speech As a Related Service

(See also Chapter V, IEP, Sections 3 and 5) The provision of speech and language services may be as a related service, required for the implementation of the IEP of a child with a disability in a category other than communication. In this event, the evaluation process for the provision of this related service does not require determination of eligibility in the area of speech or language impairment. Instead, the standard for the related service becomes a determination that the service is required to assist the child to benefit from special education. Reference the Kentucky Eligibility Guidelines-Revised

(KEG-R), Chapter IV, Eligibility Requirements, for more information.

The ARC, as part of the evaluation process, will identify areas of concern related to communication skills, which may require further assessment. Data derived from formal and functional assessment measures of communication skills are then used by the ARC to verify the nature and extent of problems related to speech or language. The ARC may also use this evaluation information to decide what type and amount of speech-language services (as a related service) are required in order for the child to benefit from the specially designed instruction that addresses the disability area in the child's IEP.

“Traumatic brain injury (TBI)” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely effects a child's educational performance. Traumatic brain injury does not mean brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. Traumatic brain injury means open or closed head injuries resulting in impairments in one or more areas, including:

- (a) cognition;
- (b) language;
- (c) memory;
- (d) attention;
- (e) reasoning;
- (f) abstract thinking;
- (g) judgment;
- (h) problem-solving;
- (i) sensory, perceptual, and motor abilities;
- (j) psychosocial behavior;
- (k) physical functions;
- (l) information processing; and
- m) speech.

The ARC may determine that an educationally relevant medical statement completed by a licensed physician is needed to verify the existence of a traumatic brain injury and the diagnosis and extent of injury, including the possible effect on educational performance.

The ARC also uses educationally relevant evaluation data to verify impairment in at least one or more of the identified areas and an adverse effect upon educational performance.

The ARC must verify that brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma, are not considered to be a traumatic brain injury in accordance with this definition. The influence of other determinant factors must also be evaluated by the ARC. (See Section 1, Step 3 of this Chapter)

“Visual impairment (VI)” means a child has a vision loss, even with correction, as follows:

- (a) visual acuity even with prescribed lenses that is 20/70 or worse in the better eye; or
- (b) visual acuity that is better than 20/70 and the child has one of the following conditions:
 - 1. a medically diagnosed progressive loss of vision;
 - 2. a visual field of 20 degrees or worse;
 - 3. a medically diagnosed condition of cortical blindness; or
 - 4. a functional vision loss;
- (c) requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency,

or
tactile exploration; and
(d) has an adverse effect on the child's educational performance.

The ARC may request a comprehensive evaluation of visual impairment. Other data may include aptitude and achievement measures and classroom observations

Step 2: Adverse Effect of Disability on Educational Performance

The decision regarding the need for specially designed instruction shall be made by the ARC only if the ARC has first determined the presence of a disability. If the child or youth meets the eligibility criteria in an area(s) of disability as specified in these procedures, then the ARC documents its interpretation of evaluation information showing whether or not the disability adversely affects the educational performance of the child or youth.

"Adverse effect" means that the progress of the child is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers. (Chapter 1, Definitions)

Educational performance reflects the total involvement of a child in the school environment; thus it includes social and emotional development, communication skills, and participation in classroom activities, as well as academic performance. Therefore, educational performance means acquiring, developing, understanding, or applying knowledge or skills needed for academic performance or social competence.

The ARC, through the determination of adverse effect, thus recognizes that unique or different instructional services, not ordinarily used with children or youth of similar age, must be used for the child with a disability to adequately and appropriately participate and progress in the KY general education curriculum, including:

- a. Using basic communication and mathematics skills for purposes and situations encountered throughout life, including reading, writing, speaking, listening, math, information processing, and computer skills;
- b. Applying core concepts and principles from mathematics, the sciences, the humanities, social studies, and practical life studies to situations countered throughout life;
- c. Become a self-sufficient individual;
- d. Become a responsible member of a family, work group, or community, including demonstrating effectiveness in community service;
- e. Thinking and solving problems in a variety of situations encountered in life;
- f. Connecting and integrating experiences and new knowledge from all subject matter fields with what has been previously learned and building on past experiences to acquire new information through various media sources; and
- g. Transition from secondary to post secondary options.

Step 3: Determinant Factors

A child shall not be determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.

Appropriate determinant factors must be considered for each disability area. In order for the child to be determined to have a disability, the ARC must conclude that the influence of the determinant factor(s), if present, is minimal, and that the child does meet eligibility requirements when all other criteria are applied.

Evaluation data presented to the ARC must address the following factors, and enable the ARC to reach a conclusion concerning each factor for every disability category:

- a. Is the student's lack of acceptable progress in the general curriculum caused or explained by the student's Limited English Proficiency?
- b. Is the child's lack of acceptable progress in the general curriculum caused or explained by the child's lack of learning experiences appropriate for the child's age and ability levels in reading and math?

If the ARC answers "yes" to either of these questions, then the child does not have a disability that requires the provision of specially designed instruction and related services. The consideration of eligibility for specially designed instruction and related services is concluded.

If the ARC answers "no" to both of these questions, then the ARC, after similar consideration of any other determinant factors for the specific disability (see list below), determines that the child is eligible as a child with a disability to receive specially designed instruction and related services.

Limited English Proficiency: The ARC must ensure that a child with Limited English Proficiency is not evaluated on the basis of criteria that essentially measures English language skills. When a child is not English proficient, the KLEA Representative will assign responsibility for determining whether:

- a. The child is able to respond to tests and assessment procedures as expected for a child who is English proficient;
- b. Test modifications or test selection and administration in the child's native language is required, or
- c. The child is not currently testable using KLEA, university, and other resources.

If evaluation is conducted, evaluators will document whether the results of tests and other assessment procedures used to determine eligibility can or cannot be explained or caused by the child's Limited English Proficiency. A child who has been evaluated as having a disability and who because of that disability needs special education and related services cannot be excluded because that child also has Limited English Proficiency. Limited English Proficiency alone, however, with no determined area of disability, is not sufficient for the ARC to determine that the child has a disability that requires special

education and related services.

Lack of Instruction in Reading and Math: The ARC will assign responsibility for determining if the child is being provided with learning experiences appropriate for the child's age and ability levels in reading and math. If not, the determination will include whether any absence of such instruction explains or causes the child to achieve at a level that is not commensurate with age and ability levels. A child who has been evaluated as having a disability and who because of that disability needs special education and related services cannot be excluded because that child also lacks learning experiences appropriate for the child's age and ability levels in reading and math. Conversely, if the child has not been provided with learning experiences appropriate for the child's age and ability levels in reading and math, the presence of a disability must verify that the lack of instruction is not the predominant factor in the child's lack of reading or math performance commensurate with age and ability levels.

If evaluation data collected supports the presence of one or more determinant factors, the recorder includes the ARC discussion of that factor(s) in the Conference Summary, and the ARC documents its decision on the Eligibility Report.

DETERMINATION OF ELIGIBILITY RESOURCES

OSEP and IDEA Partnership Approved Materials:

All materials listed are available at the following web site:

OSEP-Reviewed IDEA '97 Materials

<http://www.nichcy.org/idealist.htm>

Children with ADD/ADHD

Office of Special Education Programs (OSEP), U.S. Department of Education, 1999

This short Topic Brief looks at the eligibility of children with ADD/ADHD under IDEA 97's final regulations.

Relevant KY Statutes and Regulations:

KRS 157.200 Definitions for Special Education Programs

Materials Developed by KDE:

Technical Assistance Manual on Autism for Kentucky Schools; 1999, and
Supplemental Tool Kit for the Technical Assistance Manual; m1997

Technical Assistance Manual on Brain Injury

Kentucky Eligibility Guidelines for Students with Speech-Language Impairment-Revised (KEG-R); 2001

Pertinent Case Law:

Edward P. Springer v. The Fairfax County School; No. 97-1482; U.S. Court of Appeals for the Fourth Circuit; January 23, 1998 (27 IDELR 367)

Neither social maladjustment nor delinquent behavior alone qualifies a child exhibiting the behavior as emotionally disturbed under IDEA.

The complete text of the decision is available at:

<http://www.law.emory.edu/4circuit/jan98/971482.p.html>